92-1806

Supreme Court, U.S.
FILED
MAY 5 - 1993
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1992

CHARLES L. MEYER,
PLAINTIFF-APPELLANT PRO SE,
PETITIONER

VS.

JOHN LELSZ, ET AL.,
PLAINTIFFS-APPELLEES
JOHN J. KAVANAGH, ET AL.,
DEFENDANTS-APPELLEES,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Charles L. Meyer
Plaintiff-Appellant Pro Se
Petitioner
355 Pinewood Lane
San Antonio, Texas 78216
(210) 828-1913

QUESTIONS PRESENTED FOR REVIEW

1. Whether a U. S. Court of Appeals Fifth Circuit decision on the law of the case principle will be allowed to stand which conflicts with U. S. Courts of Appeal decisions on the same matter.

2. Whether a U. S. Court of Appeals Fifth Circuit decision on the law of the case principle will be allowed to stand which conflicts with a U. S. Supreme Court decision on the same matter.

LIST OF ALL PARTIES

Named Plaintiffs

John Lelsz, Jr., by and through his next friends, John Lelsz, Sr. and Ruth Lelsz.

Jean Gibson[1], by and through her next friend, Beryl Gibson.

Stoyan Sephus[1], by and through his next friend, Roxy Sephus.

Michael Huffman[1] (no current next friend designated)

Plaintiff Class

All persons who resided at Austin, Denton or Fort Worth State Schools after November 27, 1974 and all persons who have appeared on the Registry for State School Placement since 1981.

Defendants

The Texas Commissioner of Mental Health and Mental Retardation, Dennis Jones, the Deputy Commissioner for Mental Retardation

1. This party was represented by the Intervenor-Appellant Parent Association for the Retarded of Texas before the Fifth Circuit.

Services, Jaylon Fincannon, all Members of the Texas Board of Mental Health and Mental Retardation, and the Superintendents of Austin, Denton and Fort Worth State Schools.

Intervenors

Advocacy, Inc., Austin, Texas

Parent Association for the Retarded of Texas[2] (PART), Austin, Texas

Class Member Appellants

David Meyer, by and through his next friend Charles L. Meyer

Freda Snyder[1], by and through her next friends Fred and Ruth Snyder.

2. This Intervenor-Appellant before the Fifth Circuit declined to appeal the Fifth Circuit January 11, 1993 decision to Affirm. Refer to the Parent Association for the Retarded of Texas letter dated February 21, 1993 which was sent to the Petitioner. The Petitioner attached a copy of this letter to his Petitioner's designation of party believed to lack interest in outcome of petition which he filed on March 31, 1993.

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1992

CHARLES L. MEYER,

PLAINTIFF-APPELLANT PRO SE,

PETITIONER

VS.

JOHN LELSZ, ET AL.,

PLAINTIFFS-APPELLEES

JOHN J. KAVANAGH, ET AL.,

DEFENDANTS-APPELLEES,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT

OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Charles L. Meyer, Plaintiff-Appellant Pro Se, petitions for Writ of Certiorari to review the Fifth Circuit decision of January 11, 1993 which Affirmed the Trial Court Interlocutory Order dated December 30, 1991 which approved a second settlement agreement.

OPINIONS BELOW

The Trial Court Interlocutory Order dated December 30, 1991 is reported at 783 F. Supp. 286 (N. D. Tex., Dallas Div., 1991).

The January 11, 1993 Memorandum Opinion of the Fifth Circuit, whose judgment is herein sought to be reviewed, is not reported. This decision and the Fifth Circuit Order which denied the Petitioner's third petition for rehearing on February 4, 1993 are included in the Appendices to this Petition.

The Fifth Circuit previously held that the 1983 Settlement Agreement for the provisions requiring habitation in the least re-

strictive setting did not mandate community placements. The Fifth Circuit vacated the Trial Court decision and remanded. This decision is reported at 807 F. 2d 1243 (Fifth Cir., 1987). The Petitioner's third petition for rehearing filed with the Fifth Circuit on January 19, 1993 and denied on February 4, 1993 incorporated this 1987 Lelsz Fifth Circuit decision in his argument of the law of the case principle.

JURISDICTION

The judgment of the Court of Appeals was entered on January 11, 1993. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254 (1).

The jurisdiction of this case in the District Court was based upon 28 U. S. C. § § 1331 and 1343 (3) and (4).

STATEMENT OF THE CASE

On November 27, 1974 the Plaintiffs filed suit in the United States District

Court for the Eastern District of Texas to challenge the adequacy of conditions, care, and habitation of three of the thirteen of the Texas State Schools for the mentally retarded. In 1987 the case was certified under Rule 23 (b) (2) of the Federal Rules of Civil Procedure as a class action. The class at that time comprised approximately 2,400 residents of the Austin, Denton and Fort Worth State Schools for the mentally retarded. In 1991 the Plaintiff class numbered over 6,000 individuals. The case was transferred to the United States District Court for the Northern District of Texas Dallas Division on November 29, 1985.

In May, 1983 all of the parties signed a Resolution and Settlement Agreement which consists of 21 pages. The Trial Court approved this Resolution and Settlement Agreement by Court Order on July 19, 1983.

On August 14, 1991 three of the four existing parties presented a second Settlement

Agreement to the Trial Court. Joining in the second Settlement Agreement were the State, the Plaintiffs (as represented by class counsel, David Ferleger), and one of the two Intervenors, Advocacy, Incorporated. The other Intervenor, Parent Association for the Retarded of Texas (PART) did not join in the second Settlement Agreement. The Trial Court on September 13, 1991 preliminarily approved the second Settlement Agreement and ordered notice be given to class members pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure. By terms of the notice, written objections were to be filed by November 4, 1991.

An ancillary part of the August, 1991 Settlement Agreement was the enactment of the 1991 Texas General Laws 15 by the Texas Legislature. This legislation granted authority contingent upon Trial Court approval of the August, 1991 Settlement Agreement. This legislation created an Advisory Board

to advise Governor Ann Richards with the recommendation to close two of the 13 state schools for the mentally retarded. The Governor's Advisory Board recommended that Mexia and Travis State Schools be closed as part of the settlement of the Trial Court class action. Governor Richards rejected the closure recommendation for Mexia State School and asked the Advisory Board to recommend the closure of Fort Worth State School. Fort Worth State School is one of the three state schools which is one of the three original parties to the Trial Court class action. Governor Richards accepted the Advisory Board's recommendation to close Fort Worth and Travis State Schools.

The Petitioner is a member of the Austin, TX State School Parents Association. The Petitioner was kept generally informed of the status of the Trial Court class action by attending meetings of this organization. The Petitioner did not become personally involved

until after the Texas Department of Mental Health Mental Retardation submitted a second settlement agreement to the Trial Court in August, 1991. This second settlement agreement filed with the Trial Court contains the provision that the State of Texas shall close two of the 13 state schools for the mentally retarded. The Petitioner's son David is a resident of Austin, TX State School. The Petitioner became interested in the Trial Court class action because Governor Richards of Texas has stated publically that she intended to close Austin, TX State School.

The Petitioner filed his written objections to the proposed second settlement to the Trial Court on October 12, 1991. The Petitioner's basic written objection was that there had been a previous Resolution and Settlement Agreement in May, 1983 which was approved by Trial Court Order in July, 1983 and the previous settlement comprised the legal issue of the finality of a settlement agree-

ment. The Trial Court held a hearing on November 25--26, 1991 to consider the written objections to the Defendant's proposed second settlement. On December 30, 1991 the Trial Court issued a 34 page Memorandum Opinion and Order which approved the second settlement settlement which was submitted in August, 1991.

Two individuals, counsel for PART and Charles L. Meyer, a member of the Plaintiff class who proceeded Pro Se, filed separate written notices of appeal of the Trial Court's Interlocutory Order dated December 30, 1991 to the U. S. Court of Appeals Fifth Circuit. Two different Docket nos. were combined into one formal appeal by motion of the counsel of PART which the Fifth Circuit granted. Docket no. 91-7033 pertains only to PART. Docket no. 92-1087 was assigned to both Charles L. Meyer, Plaintiff-Appellant Pro Se and PART, Intervenor-Appellant. Oral argument was held before the Fifth Circuit

on January 5, 1993. The Fifth Circuit issued a memorandum Order on January 11, 1993 which Affirmed the December 30, 1991 Trial Court Interlocutory Order which approved the August, 1991 second settlement agreement. On January 19, 1993 the Petitioner filed his third petition for rehearing. The legal argument presented therein was that the law of the case principle precluded the Trial Court from accepting a second settlement agreement to settle the Trial Court class action. The Fifth Circuit denied the Petitioner's third petition for rehearing on February 4, 1993.

I.

CERTIORARI SHOULD BE GRANTED TO RESOLVE CONFLICTS IN THE LAW OF THE CASE PRINCIPLE BETWEEN THE DIFFERENT COURTS OF APPEAL.

The Appellant's formal appeal brief filed with the Fifth Circuit on July 23, 1992 at pages 12--14 argued the law of the case principle with its two applications to a trial court and to an appeals court. The Ap-

pellant cited the following citations for the law of the case principle which applies to a trial court: Van Gemert v. Boeing Co., 590 F. 2d 433, 436--437 (Second Cir., 1978), certiorari granted 99 S. Ct. 2158, 441 U. S. 942, 60 L. Ed. 2d 1043 (1979), affirmed 100 S. Ct. 745, 444 U. S. 472, 62 L. Ed. 2d 676 (1980); Moore v. Jas. H. Mathews and Co., 682 F. 2d 830, 833 (Ninth Cir., 1982) and all of the cases cited therein. The Appellant's arguments cited for application of the law of the case principle with application to an appeals court Moore and Pettway v. American Cast Iron Pipe Co., 576 F. 2d 1157, 1180--1190 (Fifth Cir., 1978) and all of the cases cited therein.

The Petitioner submits that portions of the Resolution and Settlement Agreement dated May, 1983 and the Trial Court Order dated July 21, 1983 which accepted this Resolution and Settlement agreement warrant the application of the law of the case principle. Excerpts

of those two documents have been included in the Petitioner's Appendices. Refer to Page 3 Paragraph 5. at Appendix B page 2. The Petitioner submits that this provision precludes the Defendant-Appellee from introducing the August, 1991 Settlement Agreement which attempts to abrogate the May, 1983 Resolution and Settlement Agreement. Refer to Page 4 Paragraph 6. b. at Appendix B page 2. Refer to Page 6 paragraph II. (4) at Appendix B page 3. Refer to Page 41 Paragraph V. at Appendix B pages 3 and 4. The citation at Appendix B page 2 at Paragraph 6. (b). is implicit that Austin, Denton, and Fort Worth State Schools shall remain open for use and shall not be closed. The law of the case principle applies to this issue and permits these three state schools to continue in existence.

The Petitioner submits that the law of the case principle applies to a decision of a coordinate court in the same case as much as to a court's own decisions. The Appellant

argued this principle in his third petition for rehearing which he filed with the Fifth Circuit on January 19, 1993 based upon the court reporter citation of Christianson v. Colt Industries Operating Corp., 108 S. Ct. 2166, 2177 at Paragraph [10] (1988), 486 U. S. 800, 100 L. Ed. 2d 811, on remand 870 F. 2d 1292 (Seventh Cir., 1989), certiorari denied 101 S. Ct. 81 (1989), 107 L. Ed. 2d 47. Further, Christianson at Page 2177 Paragraph [9] contains the following guidance. ". . . 'As most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.' Arizona v. California, 460 U. S. 605, 618, 103 S. Ct. 1382, 1391, 75 L. Ed. 2d 318 (1983) (dictum). This rule promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.' 1B J. Moore, J. Lucas, & T. Cur-

rier, Moore's Federal Practice ¶ 0.404[1], page 118 (1984) (hereinafter Moore's)."

The Petitioner cites Lelsz v. Kavanagh, 807 F. 2d 1243 (Fifth Cir., 1987). This decision is an appeal of the Trial Court approval of a motion submitted by counsel of the Plaintiff class dated February, 1985 which provided for 279 class members to be transferred to community centers. This motion was based upon the Resolution and Settlement Agreement which was approved by the Trial Court Order dated July 21, 1983. Id. at Pages 1245 and 1246. At Page 1255 the Fifth Circuit concluded that the District Court was without jurisdiction to enforce the Resolution and Settlement Agreement or remedy any violation thereof by ordering the State to make community placements of class members. The Fifth Circuit vacated the Trial Court Order dated June 5, 1985 for community placements and remanded for further proceedings. The Petitioner submits that the 1987 Lelsz

Fifth Circuit decision precludes the State from making community placements under the provisions of the 1983 Resolution and Settlement Agreement. The Petitioner further submits that a Court of Appeals must ordinarily follow a previous decision of such court, absent subsequent change in substantive law. This Federal common law principle is based upon the court reporter citation of State of Cal. Dept. of Health Services, 853 F. 2d 634, 638 (Ninth Cir., 1988) Paragraphs [1, 2] which in turn cite Royal Dev. Co. v. NLRB, 703 F. 2d 634, 638 (Ninth Cir., 1983) and Smith v. United States Postal Serv., 766 F. 2d 205, 207 (Sixth Cir., 1985). The Petitioner also cites a recent Fifth Circuit decision for this same Federal common law principle. "Under 'law of the circuit' rule, one panel of the Court of Appeals for the Fifth Circuit may not overrule the decision, right or wrong, of a prior panel. . . ." Brown v. U. S., 890 F. 2d 1329, 1336 (Fifth Cir.,

1989).

A Panel of Court of Appeals must follow decision of prior panels. Trunkline Gas Co. v. Federal Energy Regulatory Commission, 608 F. 2d 582 (Fifth Cir., 1979).

A Panel of the circuit is not at liberty to alter law of the circuit until the Supreme Court or the en banc circuit court so instructs. U. S. v. Albert, 675 F. 2d 712 (Fifth Cir., 1982).

In Fifth Circuit, one panel cannot overrule another; absent en banc reconsideration, court follows prior circuit decisions. Howard v. Gonzales, 658 F. 2d 352 (Fifth Cir., 1981).

Apparent conflict between decision which was subject of petition and decisions of courts of appeals for other circuits inpelled Supreme Court to grant certiorari. N. L. R. B. v. Metropolitan Life Ins. Co., 85 S. Ct. 1061, 1062, 1063, 380 U. S. 438, 13 L. Ed. 2d 951 (1965). The judgment of the Court of Ap-

peals was vacated and the case remanded with instructions. Id., 85 S. Ct. at 1065.

II.

THE FIFTH CIRCUIT DECISION CONFLICTS WITH THE LAW OF THE CASE PRINCIPLE BASED UPON THE 1988 U. S. SUPREME COURT CHRISTIANSON DECISION.

". . . An inferior court is bound by the mandate of the superior one, and must carry its directions into execution." Sibbold v. United States, 37 U. S. (12 Pet.) 488, 9 L. Ed. 1167 (1838), Briggs v. Pennsylvania R. Co., 334 U. S. 304, 306, 68 S. Ct. 1039, 92 L. Ed. 1403 (1948).

Federal District Courts and Courts of Appeal are bound to adhere to the controlling decisions of the U. S. Supreme Court. This Federal common law principle is expounded at Hutto v. Davis, 454 U. S. 370, 375, 102 S. Ct. 703, 705--706, 70 L. Ed. 2d 566 (1982) and Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55, 61 (Fifth Cir., 1984), cert. denied, 379 U. S. 933, 85 S. Ct. 332,

13 L. Ed. 2d 344 (1984).

Apparent conflict between decision and Supreme Court's holdings in another case impelled that court to grant certiorari. Heflin v. U. S., 79 S. Ct. 451, 452, 358 U. S. 415, 3 L. Ed. 2d 407 (1959). The Supreme Court reversed at Heflin, 79 S. Ct. 454.

United States Supreme Court granted certiorari where there was an alleged conflict between the determination made by the Court of Appeals and earlier decision of the Supreme Court. Pennsylvania R. Co. v. O'Rouke, 73 S. Ct. 302, 303, 344 U. S. 334, 97 L. Ed. 367 (1953), rehearing denied 73 S. Ct. 638, 345 U. S. 913, 97 L. Ed. 1347 (1953). The Supreme Court reversed at Pennsylvania, 73 S. Ct. at page 306.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

Charles L. Meyer
Plaintiff-Appellant Pro Se
Petitioner
355 Pinewood Lane
San Antonio, Texas 78216
(210) 828-1913

CERTIFICATE OF SERVICE

On the fifth day of May, 1993, a true and correct copy of the Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was placed in the United States Mail, Certified, return receipt requested and served upon the following named individual pursuant to Supreme Court Rule Nos. 12.1 and 29.1

Mr. William K. Suter
Court Clerk
U. S. Supreme Court
1 First Street, NE
Washington, D. C. 20543

Three copies of this petition for Writ of Certiorari have also been mailed to the Counsels of the different parties to this petion pursuant to Supreme Court Rule No. 29.3 as follows:

Mr. David Ferleger, Esquire
37 South 20th Street, Suite 601

Philadelphia, Pennsylvania 19103

Ms. Dona Hamilton, Esquire
Texas Office of the
Attorney General
General Litigation Division
Box 12548 Capitol Station
Austin, Texas 78711

Mr. Paul Coggins, Esquire
Meadows, Owens, Collier,
Reed and Coggins
3700 NCNB Plaza
901 Main Street
Dallas, Texas 75202

Mr. Garth Corbett, Esquire
Ms. Diane Shisk, Esquire
Advocacy, Inc.
7800 Shoal Creek Boulevard,
Suite 171-E
Austin, Texas 78757

Charles L. Meyer

Plaintiff-Appellant Pro Se

Petitioner

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-7033

JOHN LELSZ, et al.,
Plaintiffs-Appellees,

ADVOCACY, INC.,
Intervening
Plaintiff-Appellee,

VS.

JOHN J. KAVANAGH, M. D., et al.,
Defendants-Appellees,

VS.

PARENT ASSOCIATION FOR THE
RETARDED OF TEXAS,

Intervenor-Appellant.

No. 92-1087

JOHN LELSZ, et al.,
Plaintiffs,

JOHN LELSZ, et al.,
Plaintiffs-Appellees,

VS.

CHARLES L. MEYER,
A Member of the Plaintiff Class,
Plaintiff-Appellant,

VS.

ADVOCACY, INC.,
Intervening Plaintiff-Appellee,

VS.

JOHN L. KAVANAGH, M.D., Etc., et al.,

VS.

PARENT ASSOCIATION FOR THE
RETARDED OF TEXAS
and FREDA SNYDER,
By and Through Her Next Friends and Guardians
Fred and Ruth Snyder,
Intervenors-Appellants.

Appeals from the United States
District Court for the
Northern District of Texas
(CA3-85-2462-H)

Before REAVLEY, SMITH and EMILIO M. GARZA,

Circuit Judges. PER CURIAM:*

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

In no. 91-7033, the appeal is DISMISSED,

as the appellant has not listed the propriety of the September 4, 1991, order as an issue on appeal, nor does it provide any reasons, in the brief, as to why the order was inappropriate. Accordingly, the issue is waived. See Atwood v. Union Carbide Corp., 847 F. 2d 278, 280 (5th Cir.) (per curiam), opinion on rehearing, 850 F. 2d 1093 (5th Cir. 1988) (per curiam), cert. denied, 489 U.S. 1079 (1989).

In No. 92-1087, the judgment is AFFIRMED. We have reviewed the briefs, the record, and the argument of counsel and conclude that the district court did not abuse its discretion in approving the settlement.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1087

D.C. Docket no. CA3-85-2462-H

JOHN LELSZ, ET AL.,
Pliantiffs,

JOHN LELSZ, ET AL.,
Plaintiffs-Appellees,

V.

CHARLES L. MEYER,
a member of the Plaintiff class,
Plaintiff-Appellant,

V.

ADVOCACY, INC.,
Intervening Plaintiff-Appellee,

V.

JOHN J. KAVANAGH, M.D., ET AL.,
Defendants-Appellees,

V.

PARENT ASSOCIATION FOR THE
RETARDED OF TEXAS and FREDY SNYDER,
by and through her next friends and
guardians Fred and Ruth Snyder,
Intervenors-Appellants.

Appeals from the United States District
Court for the Northern District of Texas

Before REAVLEY, SMITH, and EMILIO M. GARZA, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the appeal in this cause is affirmed.

IT IS FURTHER ORDERED that appellants pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

January 11, 1993

ISSUED AS MANDATE: February 17, 1993

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1087

JOHN LELSZ, ET AL.,
Plaintiffs,

JOHN LELSZ, ET AL.,
Plaintiffs-Appellees,

V.

CHARLES L. MEYER, a member of the
Plaintiff class,
Plaintiff-Appellant,

V.

ADVOCACY, INC.,
Intervening Plaintiff-Appellee,

V.

JOHN J. KAVANAGH, M.D., Etc., ET AL.,
Defendants-Appellees,

V.

PARENT ASSOCIATION FOR THE
RETARDED OF TEXAS AND FREDA SNYDER,
by and through her next friends and
guardians Fred and Ruth Snyder,
Intervenors-Appellants.

Appeals from the United States District Court
for the Northern District of Texas

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

ON PETITION FOR REHEARING

(February 4, 1993)

Before REAVLEY, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/S/ J. Smith
United States Circuit Judge

REHG-4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOHN LELSZ, et. al., individually and on behalf of all others similarly situated, Plaintiffs	:	
V.	:	CIVIL ACTION NO. S-74-95-CA
JOHN J. KAVANAGH, M.D., et.al., Defendants	:	

RESOLUTION AND SETTLEMENT

. . .

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. . .

4. Jurisdiction is conferred on this Court by 28 U.S.C. 1331 and 1343(3) and (4). This action for declaratory and injunctive relief is authorized by 42 U.S.C. 1983 and 1988, the United States Constitution, 28 U.S.C. 2201 and 2202, and Rule 57 of the Federal Rules of Civil procedure. This Court has jurisdiction of the subject matter of this action and of all parties in the case. The Court

has the authority to approve and implement the relief in this Resolution and Settlement and any plans pursuant thereto.

5. These provisions include a final resolution of the defendants' obligations towards the members of the plaintiff class and of the issues raised by this litigation. . . .

. . .

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6.

. . .

b. This Resolution and Settlement applies to residents who currently or in the future reside in, or who will after the execution of this Resolution and Settlement have resided in, Austin State School, Denton State School, and Fort Worth State School or any facility operated by the three state schools and to those other members of the plaintiff class who come forward and request services.

. . .

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF TEXAS
SHERMAN DIVISION

JOHN LELSZ, et. al., individually and on behalf of all others similarly situated	)	
V.	)	No. S-74-95-CA
JOHN J. KAVANAGH, M.D., et al.	)	

ORDER AND MEMORANDUM OPINION

. . .

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. . .

II.

. . .

(4) . . . The settlement does not close any of the three institutions.

. . .

-41-

. . .

V.

. . .

Both plaintiffs and defendants have ex-

pressed their willingness to abide by the settlement terms . . .

. . .

ORDERED that the proposed Resolution and Settlement shall be, and it is hereby, APPROVED.

SIGNED and ENTERED this 19th day of July, 1983.

/S/ Wm. Wayne Justice

Chief Judge